



**DEPARTMENT OF TRANSPORTATION**

**[4910-EX-P]**

**Federal Motor Carrier Safety Administration**

**49 CFR Part 395**

**[Docket No. FMCSA-2017-0296]**

**Hours of Service of Drivers: Application for Exemption; Western Equipment Dealers Association (WEDA)**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Application for exemption; request for comments.

**SUMMARY:** FMCSA announces that the Western Equipment Dealers Association (WEDA) has requested an exemption on behalf of several other organizations and their membership from the requirement that no later than December 18, 2017, a motor carrier require each of its drivers to use an electronic logging device (ELD) to record the driver's hours-of-service (HOS). WEDA states that equipment dealer operations in agriculture constitute unique circumstances that warrant the requested exemption, and not granting it will pose an undue burden on equipment dealers and their customers without any measurable safety benefit. In its application, WEDA seeks a five-year, renewable exemption from the ELD requirements which, the organization states, if granted will achieve a level of safety equivalent to, or greater than, the level that would be achieved absent the proposed exemption. FMCSA requests public comment on WEDA's application for exemption.

**DATES:** Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER.]

**ADDRESSES:** You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA-2017-0296 by any of the following methods:

- Federal eRulemaking Portal: [www.regulations.gov](http://www.regulations.gov). See the Public Participation and Request for Comments section below for further information.
- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Fax: 1-202-493-2251
- Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to [www.regulations.gov](http://www.regulations.gov), including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to [www.regulations.gov](http://www.regulations.gov) at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

**FOR FURTHER INFORMATION CONTACT:** For information concerning this notice, contact Mr. Tom Yager, Chief, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 614-942-6477. E-mail: [MCPSD@dot.gov](mailto:MCPSD@dot.gov). If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

**SUPPLEMENTARY INFORMATION:**

**I. Public Participation and Request for Comments**

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2017-0296), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comments online, go to [www.regulations.gov](http://www.regulations.gov) and put the docket number, “FMCSA-2017-0296” in the “Keyword” box, and click “Search.” When the new screen appears, click on “Comment Now!” button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11

inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period and may grant or not grant this application based on your comments.

## **II. Legal Basis**

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

### **III. Request for Exemption**

WEDA filed this application for exemption on behalf of its own organization and the following: Northeast Equipment Dealers Association; North Dakota Implement Dealers Association; Midwest-South Eastern Equipment Dealers Association; Far West Equipment Dealers Association; Deep South Equipment Dealers Association; Equipment Dealers Association and the United Equipment Dealers Association.

These groups represent approximately 6,000 farm, industrial and outdoor power equipment dealers in North America. WEDA states that in the agriculture sector, equipment dealers play a key role in selling and servicing equipment for farmers and ranchers, as they transport machinery to and from farms and between dealerships. They partner with agricultural producers to increase productivity through the training and use of new equipment technologies. Complying with the ELD requirement will be unduly burdensome for equipment dealers and their customers - farmers and ranchers, without providing the sought-after safety advancements contemplated by the rule.

Many of the vehicles owned by equipment dealers require a commercial driver's license to operate. When transporting equipment to and from the farm, on behalf of the farmer, they are either delivering new equipment or transporting equipment to a dealership to be serviced. Equipment dealers also employ service trucks that drive to farms and ranches to work on customer's equipment and deliver parts to the customer's location. In either instance, these vehicles usually operate within a confined distance from the dealership of less than 150 miles, and are primarily in rural regions of their respective states.

WEDA states that due to the seasonal, unpredictable and rural nature of agriculture production, Congress has granted agriculture businesses numerous exemptions from transportation requirements. The clear intent was to accommodate agricultural operations by broadening the scope of existing agribusiness exemptions in terms of distance and types of entities covered by the exemption because the reality of farming and ranching operations required it.

WEDA explains that the agribusiness exemption to the HOS rules is separate and distinct from the short-haul exemption. Under 49 CFR (k)(1-3), equipment dealers are exempt from HOS and log book requirements during State-defined harvest and planting seasons when: 1) transporting farm supplies for an agricultural purpose; 2) from the dealership to a farm; and 3) within a 150 air-mile radius of the distribution point. This exemption, however, does not cover transportation of equipment from the farm to a dealership.

The ELD rule, according to WEDA, creates confusing and overlapping scenarios due to the conflicting rules placed on equipment dealers. Depending on the State definition of harvest and planting season, an equipment dealer may be required to install an ELD for only the couple of months of the year when the agribusiness exemption is not in effect. The agribusiness exemption is limited in scope; therefore, an equipment dealer could be exempt from using an ELD in certain cases, while still required to utilize an ELD in others.

The ELD requirements threaten to limit the exemptions and weave a complex regulatory framework that would be difficult for equipment dealers to comply with, advises WEDA. The short-haul and agribusiness exceptions apply in different scenarios

at different times, and it is unclear in the first instance whether both can be combined to cover a single driving operation. For example, the agribusiness exemption would not currently apply to an equipment dealer hauling a broken tractor from a farm to the dealership for repair. The short-haul exemption would apply, though, so long as the farm is within 100 miles and the HOS requirements are met. However, suppose a service truck hauling a trailer visits a farm 120 miles from the dealership to repair a tractor. After attempting repairs for several hours and working beyond 12 hours in the day, the technician must return with the tractor or another piece of equipment to perform services at the dealership. The short haul exemption would not apply because it is beyond the 100-mile radius and the HOS requirements have been exceeded, nor would the agribusiness exemption apply because a driver is not covered while transporting equipment from a farm to the dealership. The driver would then be required to record the entirety of the day's driving on an ELD because no exemption applies. This is but one scenario of many where three complex rules overlap at different intervals to create confusion about the regulations that should be followed, and do not contribute to increased safety for the driver or the driving public.

As a practical matter, WEDA states that equipment dealers are required to install ELDs in all of their commercial vehicles despite never or very rarely utilizing them. Because of the complex and confusing overlap, many dealers will install and utilize ELDs when unnecessary to avoid harsh penalties including thousands of dollars in fines and potential shutdown orders. Equipment dealers will not claim the exemptions intended for them by Congress because the confusion and complexity spawned by the ELD rule creates the risk of penalties being imposed which outweigh the benefits. The

result will be severely diminished hours of operation for equipment dealers, and, consequently, reduced responsiveness to their customers. Costs and downtime for farmers and ranchers will undoubtedly increase making their agriculture producers less competitive in a global market.

#### **IV. Method to Ensure an Equivalent or Greater Level of Safety**

WEDA states that its request falls within the FMCSA's discretion to grant because the law currently provides overlapping exemptions and exceptions that, taken together with the ELD mandate, create confusing and contradicting requirements for equipment dealers. In addition, equipment dealers' operations constitute unique aspects that should warrant an exemption from the ELD rules. WEDA therefore seeks a five-year, renewable exemption from the ELD requirements in the Federal regulations. WEDA believes the request should be granted because the exemption will achieve a level of safety equivalent to, or greater than, the level that would be achieved absent the proposed exemption.

A copy of WEDA's application for exemption is available for review in the docket for this notice.

**Issued on:** October 23, 2017

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Larry W. Minor  
Associate Administrator for Policy

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